



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

York River and the Naval Weapons Station Yorktown-Cheatham Annex, Yorktown, Virginia; danger zone.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to establish a danger zone in the waters of the York River off Cheatham Annex, in York County, Virginia. The Cheatham Annex Small Arms Training Center is used by more than 50 active Navy, reserve Navy and active Marine Corps units. The proposed danger zone is necessary to protect the public from hazards associated with the small arms fire operations.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2013-0012, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: [david.b.olson@usace.army.mil](mailto:david.b.olson@usace.army.mil). Include the docket number, COE-2013-0012, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2013-0012. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov). All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as

copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC at 202-761-4922, or Mr. Robert Berg, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7793.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR Part 334 to add a permanent danger zone, in the waters of the York River off Cheatham Annex, York County, Virginia. The proposed danger zone is necessary to protect the public from hazards associated with small arms fire operations.

#### Procedural Requirements

##### a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

##### b. Review under the Regulatory Flexibility Act.

This proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that

the proposed danger zone would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

**PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Add § 334.285 to read as follows:

§ 334.285 York River and the Naval Weapons Station Yorktown-Cheatham Annex, Yorktown, Virginia; danger zone.

(a) The area. The waters within an area beginning at mean high water on the shore at the facility located at latitude 37°17'33.10"N, longitude 76°36' 19.06"W; then northeast to a point in the York River at latitude 37°18'36.65"N, longitude 76°34'39.01"W; thence south, southeast to latitude 37°17'59.37"N, longitude 76°34' 13.65"W; then southwest to a point on the shore located at latitude 37°17'26.75"N, longitude 76°36'14.89"W.

(b) The regulations. (1) Vessels and persons may transient this area at any time. No vessel or persons shall anchor, fish or conduct any waterborne activities within the danger zone established in accordance with this regulation any time live firing exercises are being conducted.

(2) Anytime live firing is being conducted, the person or persons in charge shall display a red flag from a conspicuous location along the shore to signify the range is active and post lookouts to ensure the safety of all vessels passing through the area. At night, red lights will be displayed in lieu of flags. No firing activities shall be conducted when the visibility is less than the maximum range of the weapons being used at the facility.

(3) Recreational and commercial activities may be conducted in this area anytime the range is inactive.

(c) Enforcement. The regulations in this section shall be enforced by the Commander, Naval Weapons Station, Yorktown, or such agencies as he or she may designate.

Dated: September 10, 2013.

Approved: \_\_\_\_\_

James R. Hannon

Chief, Operations and Regulatory

Directorate of Civil Works

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